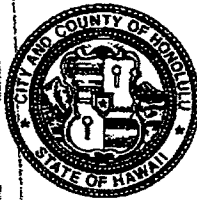
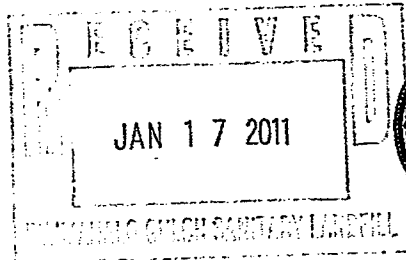


DEPARTMENT OF ENVIRONMENTAL SERVICES
CITY AND COUNTY OF HONOLULU

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IN REPLY REFER TO:

January 13, 2011

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Ms. Joanna L. Seto
Acting Branch Chief
Clean Water Branch
State of Hawaii, Department of Health
919 Ala Moana Boulevard, Room 300
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Re: Waimanalo Gulch Sanitary Landfill (WGSL)
Storm Water Drainage

Messrs. Gill and Chang and Ms. Seto:

I am writing in response to Department of Health (DOH), Clean Water Branch's (CWB's) recent directive to the Department of Environmental Services (ENV) and Waste Management Hawaii (WMH) from Mike Tsuji to post signage relating to releases of allegedly contaminated wastewater. The City contends that such signage is not required by the law. However, in order to explain this position, I need to review the recent events and understandings leading to this recent CWB directive.

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Storm Event and Resultant Accumulation of Storm Water:

On December 19, 2010, there were heavy rains on Oahu that resulted in storm water runoff at WGSL. On December 20, 2010, WMH contacted the DOH, Solid and Hazardous Waste Branch (SHWB) as a courtesy to notify them of the established practice of draining storm flows from as heavy as a 24-hour, 25-year storm into the storm water drain systems required by the WGSL Solid Waste Management Permit No. LF-0182-09 (SWM Permit).

On Tuesday, December 21, 2010, CWB inspectors inspected WGSL, with the assistance of Justin Lottig of WMH who fully disclosed to the CWB inspectors WMH's actions in response to the storm. The CWB inspectors left without indicating to WMH that they had any concerns regarding WMH's actions.

Two days after the CWB inspection, on December 23, 2010, in response to WMH's courtesy notification four days earlier, SHWB inspectors conducted an inspection of WGSL and expressed concern that they observed that the storm water had touched municipal solid waste. After speaking with Mr. Lottig, the SHWB inspectors appeared to be less concerned with WMH's treatment of the storm water, commenting that it was less of a concern given the fact that the entire island was under a brown water advisory.

Later that same afternoon, CWB inspectors returned for a second inspection, during which they talked again with Mr. Lottig and then requested that WMH take samples of the storm water and discontinue the discharge of the storm water into the storm water drain systems. WMH complied with both requests. The test results have since been obtained and confirm that the storm water met state and federal standards for storm water run off, except for naturally-occurring background concentrations of iron and zinc, which are typically found in storm water discharges throughout Oahu.

Also that afternoon on December 23, 2010, Joanna Seto from the CWB contacted ENV and instructed ENV to issue a press release stating that there had been a release of storm water that is potentially contaminated with leachate into the Ko Olina coastal area. She said that this reporting requirement was similar to the requirement to issue a press release when there is a sewer spill. Ms. Seto did not explain the basis for her conclusion that the storm water was potentially contaminated with leachate, and also mistakenly equated this event with a wastewater discharge. ENV therefore declined, explaining that the storm water was not leachate under the law, that draining

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the storm water flows was an established practice with which DOH was familiar, and that there was no basis for requiring the press release. At approximately 9:41 p.m. that night, DOH issued its own press release advising that WGSL had "discharged a large quantity of storm water potentially contaminated with landfill waste to the Pacific Ocean."

On January 12, 2011, twenty-four days after the initial discharge of storm water, Mike Tsuji from CWB contacted ENV, Division of Environmental Quality, and WMH, directing them to post signage regarding "contaminated water" from WGSL if an event similar to the December 19, 2010 storm occurred during the currently pending flood advisory issued for Oahu.

ENV's understanding is that the storm water from the December 19, 2010 event had not "percolated or passed through or emerged from solid waste" as defined in Hawaii Administrative Rules section 11-58.1 and was therefore not leachate under the law. Instead, DOH believes that the storm water had some (unquantified) contact with solid waste and that pursuant to Section G, entitled "Surface Water Management," number 2 of the SWM Permit "[s]tormwater that comes in contact with solid waste shall be managed and disposed of as leachate." Therefore, although the storm water itself was not leachate under the law, DOH asserts that it was to be treated as leachate as provided in the SWM Permit.

Potential Public Health Emergency Created by Closure of WGSL Averted – Storm Water Disposed of into Wastewater Treatment Facilities:

If the subject storm water is not drained from the areas of accumulation, WMH will not be able to continue to operate WGSL, resulting in a potential public health emergency due to restricted waste collection and disposal options for the entire island of Oahu. Therefore, notwithstanding its belief that the storm water is not leachate, at DOH's insistence, ENV agreed to assist WMH in its disposal of the accumulated storm water, via the wastewater collection system, into the Waianae and Kailua wastewater treatment facilities, thus enabling WMH to move forward with the continued operation of WGSL. This disposal requires ENV to closely coordinate and monitor the discharge to ensure that the collection system has capacity to accommodate the additional volume, and that the storm water does not impede the capacity or effective operation of the treatment plants. Because the storm water was not leachate under the law and cannot generally be disposed of in the collection system, I exercised my discretion to invoke an

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exception to Revised Ordinance of Honolulu (ROH) Sec. 14-1.9, "Use of public sewers—Restrictions—Violations," to justify the disposal at the treatment facilities.¹

I conferred with the SHWB and CWB on January 11, 2011 and all parties agreed to a plan of action to ensure continued use of WGSL via the draining of the accumulated storm water into the treatment plants so as to facilitate incremental re-opening of the impacted E-6 Cell.

CWB Directive to Post Contaminated Water Signage Not Required by Law:

Today, the CWB contacted ENV and WMH to demand the posting of signs warning of contaminated water discharges from WGSL, given the predicted rainfall. CWB cited no authority for this demand, but the directive implies that the storm water be treated as though it were wastewater. The City finds no basis for this conclusion in law. HAR section 11-62-06(g)(5) provides in relevant part that, "[n]o person or the owner shall cause or allow any *wastewater system* to create or contribute to . . . [w]astewater spill, overflow, or discharge into surface waters or the contamination or pollution of state waters[.]" HAR chapter 11-62, Appendix C, section 2.e requires that when there are spills from a facility, warning signs are to be posted in the areas likely to be affected by the spill and where public access is possible. We are assuming that this is the purported legal basis for CWB's directive to ENV and WMH.

However, this is not applicable to the present circumstances because WGSL is not a "*wastewater system*" as defined by HAR section 11-62-03:

"Wastewater system" means the category of all wastewater and wastewater sludge treatment, use, and disposal systems, including all wastewater treatment works, collection systems, wastewater sludge facilities, recycled water systems, and individual wastewater systems.

¹ ROH § 14-1.9(a) provides:

No person shall discharge or cause to be discharged any storm water, surface water, groundwater, roof runoff, subsurface drainage, or any other source of inflow into any public sewer or any private sewer which is connected to the public sewer. However, the director may approve discharges of any nature or origin from public projects into the public sewer or any private sewer which is connected to the public sewer.

ENV characterizes WGSL as a public project and thus applied the above exception to enable disposal of the accumulated storm water into the treatment facilities.

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The drainage system at WGSL is **not** a *wastewater treatment, use or disposal system*. In fact, as indicated above, pursuant to its SWM Permit, WGSL is required to and does have a surface water management system in place. SHWB recognized that there would be runoff resulting from storm events at WGSL and therefore required the "design, construction and maintenance of a surface water run-on and run-off control system." If, as CWB contends, all runoff from WGSL is automatically "wastewater" then there would have been no provision for a surface water drainage system, but instead, all surface water runoff would have been directed to the sewer system. The fact that DOH instead required the surface water drainage system directly negates the characterization of runoff as wastewater.

CWB's requirement to post signs is particularly unsettling to ENV because it is the first time since WGSL began operations that CWB is communicating to ENV and WMH what appears to be its conclusion that storm water runoff from WGSL is leachate, therefore wastewater, and therefore requires regulation pursuant to HAR Chapter 11-62.

We are concerned by what we perceive as a series of unreasonable demands without any articulated basis in DOH's legitimate regulatory authority. SHWB asserted first, that accumulated storm water is leachate that may not be pumped into the storm drain system, but must be disposed of at the treatment plants. Then, today, CWB asserts even more broadly that WGSL's storm water runoff requires the posting of warning signs as if it were wastewater. These conclusions are not supported by the facts or the law, and are contrary to the measures that ENV and WMH have taken over the years, at DOH's direction and/or with DOH's approval. (We are in possession of CWB's latest email, sent at approximately 4:00 today, which incorrectly purports to reiterate matters discussed and agreed upon between DOH and ENV, including additional requirements relating to storm water management at WGSL. We will address the contents of this email tomorrow.)

ENV and WMH sincerely appreciate SHWB's and CWB's cooperation to the extent that it is directed at facilitating removal of the accumulated storm water to enable continued use of WGSL and to avert the public health disaster of having to shut down solid waste collection and disposal due to closure of WGSL. To this end, so that we may most appropriately dispense with the accumulated storm water and manage future runoff in a way that ensures continued operation of WGSL, we request that the CWB consult with SHWB and vice versa and that both DOH branches consult with their respective deputy attorneys general prior to imposing requirements upon ENV and

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WMH. We remain ready, willing, and able to meet with DOH, and look forward to all parties working from the same set of assumptions and understandings, for maximum protection of public health and safety.

If you have any questions or concerns, please feel free to contact me at 768-3486.

Very truly yours,

A handwritten signature in black ink, appearing to read 'T. Steinberger', with a long, sweeping horizontal line extending to the left.

Timothy E. Steinberger, P.E.
Director

cc: Refuse
Waste Management Hawaii

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